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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,877	03/30/2004	Teresa Mead	017242-010500US	5757

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EXAMINER
EDELL, JOSEPH F

ART UNIT	PAPER NUMBER
3636	

MAIL DATE	DELIVERY MODE
11/29/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/813,877	MEAD ET AL.	
	Examiner	Art Unit	
	Joseph F. Edell	3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *26 September 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *20-22,24-31,36-40,42 and 43* is/are pending in the application.

4a) Of the above claim(s) *26 and 27* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *20-22, 24, 25, 28-31, 36-40, 42 and 43* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 26 September 2007 has been entered.

Response to Amendment

2. The declaration filed on 26 September 2007 under 37 CFR 1.131 has been considered but is ineffective to overcome the Leach reference (USPN 6,553,590 B1).

The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the Leach reference. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897). No date of conception is provided in the declaration filed under 37 CFR 1.131.

The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Leach reference to either a constructive

reduction to practice or an actual reduction to practice. Applicant has failed to provide evidence of full-time devotion necessary to establish diligence in the asserted actual reduction to practice of the prototype presented to Marcia Costello on February 14, 2002.

The evidence submitted is insufficient to establish a reduction to practice of the invention in this country or a NAFTA or WTO member country prior to the effective date of the Leach reference. Please note, Exhibits B and C submitted on 26 September 2007 are so poor in quality that no features of the baby holding device are discernable. In the interest of compact prosecution, Examiner has interpreted Exhibits B and C submitted on 26 September 2007 as being substantially the same as the Exhibits B and C filed, but not entered, on 30 July 2007. Exhibits B and C fail to show each limitation of independent claims 20 and 36. For example, Exhibits B and C fail to show the seat disposed in the well region of the pillow body. Moreover, Applicant has failed to provide adequate corroborative evidence establishing reduction to practice of the invention. Lastly, each inventor has not signed the declaration.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 20, 21, 24, 25, 31, 36, 40, 42, and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Publication No. 20020042953 A1 to Matthews Brown in view of U.S. Patent No. 6,553590 B1 to Leach.

Matthews Brown discloses a holding device is basically the same as that recited in claims 20, 21, 24, 25, 31, 36, 40, 42, and 43 except that the pillow body lacks a holding strap, as recited in the claims. See Figure 8 of Mattews Brown for the teaching that the holding device has a pillow body 60 with a medial region 64 and two opposed curved arms 66,68 extending from the medial region defining an inner well region (see page 3, paragraph 37), a seat 72 coupled to the pillow and disposed within the well region and sewn to the arms and medial region (see page 4, paragraph 42), and a fabric shell (see page 3, paragraph 31) encasing a filling material to form the pillow wherein a baby's feet are permitted to hang from the seat. Leach shows a holding device similar to that of Matthews Brown wherein the holding device has a pillow body 10 (see Fig. 1) with a medial region and two opposing curved arms, and a securing system 12 operably coupled to the pillow body such that the securing system has a center holding strap 14 configured to be placed between a baby's legs so as to extend over at least a portion of the baby's torso and be operably coupled directly to the opposing arms via free ends to hold the baby within the well region, the center holding strap is sized to cover the front of the baby lower torso and crotch region, connectors 36 (see Fig. 2) located on the curved arms are connectable to mating connectors on the center holding strap 20, the center strap inherently permits the baby's feet to hang, and the connectors are hook and loop fasteners.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the holding device of Matthews Brown such that the securing system has a center holding strap extending from the seat that is configured to be placed between a baby's legs so as to extend over at least a portion of the baby's torso and be operably coupled directly to the opposing arms via free ends to hold the baby in the seat within the well region, the center holding strap is sized to cover the front of the baby lower torso and crotch region, connectors located on the curved arms are connectable to mating connectors on the center holding strap, the center strap is coupled to the seat at a location to permit the baby's feet to hang from the seat, and the connectors are hook and loop fasteners, such as the holding device disclosed by Leach. One would have been motivated to make such a modification in view of the suggestion in Leach that the specified holding strap allows for an adjustable baby restraint.

5. Claims 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matthews Brown in view of Leach as applied to claims 20, 21, 24, 25, 31, 36, 40, 42, and 43 above, and further in view of U.S. Patent No. 2,848,040 to Chernivsky.

Matthews Brown discloses a holding device that is basically the same as that recited in claims 22 except that the connectors are not specified as buckle connectors, as recited in the claims. Chernivsky shows a holding device similar to that of Matthews Brown wherein the device has a securing system (see Fig. 3) with a center holding strap 36,40 including buckle connectors 38. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the

holding device of Matthews Brown such that the connectors comprise buckle connectors, such as the holding device disclosed by Chernivsky. One would have been motivated to make such a modification in view of the suggestion generally available to one of ordinary skill in the art that buckle connectors are conventional connectors to secure holding straps in baby holding devices.

6. Claims 28-30 and 37-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matthews Brown in view of Leach as applied to claims 20, 21, 24, 25, 31, 36, 40, 42, and 43 above, and further in view of U.S. Patent No. 5,546,620 to Matthews.

Matthews Brown discloses a holding device that is basically the same as that recited in claims 28-30 and 37-39 except that the dimensions of the medial region, the arms, and the well region are not specified, as recited in the claims. Matthews shows a holding device similar to that of Matthew Brown wherein the holding device has a pillow body 12 (see Fig. 1) with a medial region 14 and two opposed curved arms 16,18 extending from the medial region defining an inner well region, a seat 42 coupled to the pillow and disposed within the well region, the medial region has a height ranging from 1 to 10 inches and a width ranging from 4 to 10 inches, the arms have a height ranging from 1 to 6 inches, a width ranging from 4 to 10 inches, and a length ranging from 10 to 20 inches, and the well region has a width ranging from 4 to 12 inches and a length ranging from 4 to 12 inches (see column 3, lines 1-32). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the holding device of Matthews Brown such that that the medial region

has a height ranging from 1 to 10 inches and a width ranging from 4 to 10 inches, the arms have a height ranging from 1 to 6 inches, a width ranging from 4 to 10 inches, and a length ranging from 10 to 20 inches, and the well region has a width ranging from 4 to 12 inches and a length ranging from 4 to 12 inches, such as the holding device disclosed by Matthews. One would have been motivated to make such a modification in view of the suggestion in Matthews that the dimensions set forth provide a tapering well region that desirably supports the baby in one or more predetermined positions.

Moreover, modifying the dimensions of the medial region, the arms, and the well region would have been obvious at the time of Applicant's invention because the use of optimal workable ranges discovered by routine experimentation is ordinarily within the skill of the art. Further, it would have been an obvious matter of design choice to modify the dimensions of the medial region, the arms, and the well region since the Applicant has not disclosed that having the specific dimensions solve any stated problem or is for any particular purpose and it appears that the holding device would perform equally well with an well known dimensions used in the art.

Response to Arguments

7. Applicant's arguments filed 26 September 2007 have been fully considered but they are not persuasive. Applicant's arguments were drawn solely to ante-date the Leach reference. Because Applicant's filed declaration fails to remove the 35 U.S.C. § 103(a) rejections and no arguments were drawn to the limitations of claims 20-22, 24, 25, 28-31, 36-40, 42, and 43, Examiner maintains these rejections.

Conclusion

8. This is a request for continued examination under 37 CFR 1.114. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph F. Edell whose telephone number is (571) 272-6858. The examiner can normally be reached on Mon.-Fri. 8:30am-5:00pm.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JOE EDELL
PRIMARY EXAMINER

Joe Edell
October 9, 2007